

AG Contract No. KR98 0962TRN  
ADOT ECS File No. JPA 98-77  
Project No. TEA-EGR-0(1)P  
TRACS No. SL398 01C  
Project: Multi Use Pathway

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE DEPARTMENT OF TRANSPORTATION  
AND  
THE TOWN OF EAGAR

THIS AGREEMENT is entered into 23 June, 1998,  
pursuant to the provisions of Arizona Revised Statutes Section 11-951  
through 11-954, as amended, between the STATE OF ARIZONA, acting by  
and through its DEPARTMENT OF TRANSPORTATION, (the "State"), and the  
TOWN OF EAGAR, acting by and through its MAYOR and TOWN COUNCIL (the  
"Town").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.
3. Congress has authorized appropriations for, but not limited to, the design and construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for approval.

NO. 22429  
Filed with the Secretary of State  
Date Filed: 06/23/98  
Robert Paulina  
Secretary of State  
Billy Hammersted

5. The only interest of the State in this project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement, to be constructed by Town forces, and the estimated cost is as follows: Construct Multi-Use Pathway.

Estimated Project Cost	\$296,492.00
Federal Aid Funds @94.3%	\$279,592.00
Eagar Town funds @5.7%	\$ 16,900.00

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

#### II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the Town with the aid and consent of FHWA and the State will proceed to construct the project; such project to be performed, completed, accepted and paid for in accordance with the approved plans and specifications. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the Town shall be obligated to for any expenditure in excess of the estimates herein.

2. Prior to construction, the Town shall set aside sufficient funds in the amount determined to be necessary to match federal funds.

3. The Town shall acquire, without cost to the State, any necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.
6. Upon completion of construction, the Town shall provide maintenance unless assumed by another governmental entity.
7. The Town will provide personnel to administer and supervise construction. All construction project change orders are to be copied to the State.
8. The Town will complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules, or regulations. In the event the Town fails to comply with the plans, specifications or any relevant State or federal statutes, rules, or regulations, the Town shall hold the State harmless from any claims or costs incurred by the State as a result of the Town's failure to comply.
9. State employees may perform any inspections of the project or audit any books or records of the Town in order for the State to assure itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

### III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007


Town of Eagar  
Town Engineer  
PO Box 1300  
Eagar, AZ 85925


8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

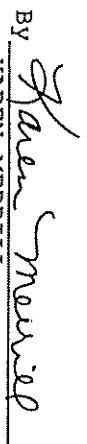
TOWN OF EAGAR

STATE OF ARIZONA  
Department of Transportation

By   
SANDRA BURK  
Mayor

By   
PETER L. ENO  
Contract Administrator

ATTEST

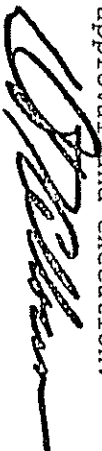
By   
KAREN MERRILL  
Town Clerk

19may

RESOLUTION

BE IT RESOLVED on this 19th day of May 1998, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the Town of Eagar for the purpose of defining responsibilities for the design, construction and maintenance of a multi-use path.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in dark ink, appearing to read 'DAVID ALIOCCO', is written over a horizontal line.

DAVID ALIOCCO, Manager  
Engineering Technical Group  
for Mary E. Peters, Director

RESOLUTION NO. 98-17

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL  
OF THE TOWN OF EAGAR, COUNTY OF APACHE,  
STATE OF ARIZONA, AUTHORIZING AN  
INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
TOWN OF EAGAR AND THE DEPARTMENT OF  
TRANSPORTATION CONCERNING MULTI-USE PATH ON  
CENTRAL AVENUE.

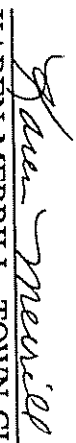
WHEREAS, the Town of Eagar, a municipal corporation, and the Arizona  
Department of Transportation are desirous to enter into an agreement concerning a multi-use  
path on Central Avenue in Eagar, Arizona.

NOW THEREFORE, BE IT RESOLVED that the Eagar Town Council, at a properly  
called meeting of the council, hereby authorizes the Mayor to enter into an intergovernmental  
agreement with the State of Arizona Department of Transportation for the purpose of design,  
construction and maintenance of a multi-use path. The Mayor is authorized to sign all  
necessary documents to effect the agreement.

PASSED AND ADOPTED by the Mayor and Town Council of Eagar, Arizona this  
7th day of June, 1998.

ATTEST:

APPROVED:

  
KAREN MERRILL, TOWN CLERK

  
SANDRA BURK, MAYOR

APPROVED AS TO FORM:

  
DOUGLAS E. BROWN, TOWN ATTORNEY

JPA 98-77

APPROVAL OF THE EAGAR TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF EAGAR and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 2<sup>nd</sup> day of June, 1998.

  
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Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS  
ATTORNEY GENERAL

TRN Main: (602) 542-1680

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Fax: (602) 542-3646

MAIN PHONE : 542-5025

TELECOPIER : 542-4085

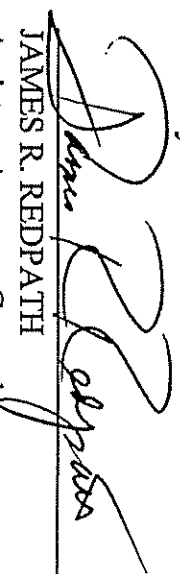
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR98-0962TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE June 17, 1998.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:et/13110

Enc.